

1 H.912

2 Introduced by Committee on Health Care

3 Date:

4 Subject: Health; Green Mountain Care Board; State Health Improvement Plan;
5 Health Resource Allocation Plan; certificate of need

6 Statement of purpose of bill as introduced: This bill proposes to modify the
7 scopes and functions of the Health Resource Allocation Plan and the health
8 care expenditure analysis and to revise the certificate of need process for
9 hospitals and other health care facilities. It would replace the Green Mountain
10 Care Board's duty to create a unified health care budget with a requirement for
11 an estimate of future health care spending. It would specify that a member,
12 officer, or employee of the Green Mountain Care Board may perform services
13 that are within the Board's jurisdiction and that the Board delegates to that
14 member, officer, or employee. The bill would also authorize the Green
15 Mountain Care Board to continue performing annual Medicaid advisory rate
16 cases for health care services to be delivered through an accountable care
17 organization.

18 An act relating to the health care regulatory duties of the Green Mountain
19 Care Board

20 It is hereby enacted by the General Assembly of the State of Vermont:

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Sec. 3. 18 V.S.A. § 9402 is amended to read:

§ 9402. DEFINITIONS

As used in this chapter, unless otherwise indicated:

* * *

(10) “Health Resource Allocation Plan” means the plan ~~adopted~~
published by the Green Mountain Care Board ~~under section~~ in accordance with
subsection 9405(b) of this title.

* * *

(16) “State Health Improvement Plan” means the plan developed under
section 9405 of this title.

* * *

Sec. 4. 18 V.S.A. § 9405 is amended to read:

§ 9405. STATE HEALTH IMPROVEMENT PLAN; HEALTH RESOURCE
ALLOCATION PLAN

(a) ~~No later than January 1, 2005, the~~ The Secretary of Human Services or
designee, in consultation with the Chair of the Green Mountain Care Board
and health care professionals and after receipt of public comment, shall adopt a
State Health Improvement Plan that sets forth the health goals and values for
the State. The Secretary may amend the Plan as the Secretary deems necessary
and appropriate. The Plan shall include health promotion, health protection,

1 nutrition, and disease prevention priorities for the State; identify available
2 human resources as well as human resources needed for achieving the State's
3 health goals and the planning required to meet those needs; and identify
4 geographic parts of the State needing investments of additional resources in
5 order to improve the health of the population. ~~The Plan shall contain sufficient~~
6 ~~detail to guide development of the State Health Resource Allocation Plan.~~
7 Copies of the Plan shall be submitted to members of the Senate and House
8 ~~Committees~~ Committee on Health and Welfare ~~no later than January 15, 2005~~
9 and the House Committee on Health Care.

10 (b) ~~On or before July 1, 2005, the~~ The Green Mountain Care Board, in
11 consultation with the Secretary of Human Services or designee, shall ~~submit to~~
12 ~~the Governor a four-year Health Resource Allocation Plan~~ publish on its
13 website the Health Resource Allocation Plan identifying Vermont's critical
14 health needs, goods, services, and resources, which shall be used to inform the
15 Board's regulatory processes, cost containment and statewide quality of care
16 efforts, health care payment and delivery system reform initiatives, and any
17 allocation of health resources within the State. The Plan shall identify
18 Vermont residents' needs ~~in~~ for health care services, programs, and facilities;
19 the resources available and the additional resources that would be required to
20 realistically meet those needs and to make access to those services, programs,
21 and facilities affordable for consumers; and the priorities for addressing those

1 needs on a statewide basis. The Board may expand the Plan to include
2 resources, needs, and priorities related to the social determinants of health.

3 The Plan shall be revised periodically, but not less frequently than once every
4 four years.

5 (1) ~~The Plan shall include~~ In developing the Plan, the Board shall:

6 (A) ~~A statement of principles reflecting the policies~~ consider the
7 principles in section 9371 of this title, as well as the purposes enumerated in
8 sections 9401 and 9431 of this chapter ~~to be used in allocating resources and in~~
9 ~~establishing priorities for health services.~~ title;

10 (B) ~~Identification of the current supply and distribution of hospital,~~
11 ~~nursing home, and other inpatient services; home health and mental health~~
12 ~~services; treatment and prevention services for alcohol and other drug abuse;~~
13 ~~emergency care; ambulatory care services, including primary care resources,~~
14 ~~federally qualified health centers, and free clinics; major medical equipment;~~
15 ~~and health screening and early intervention services.~~

16 (C) ~~Consistent with the principles set forth in subdivision (A) of this~~
17 ~~subdivision (1), recommendations for the appropriate supply and distribution~~
18 ~~of resources, programs, and services identified in subdivision (B) of this~~
19 ~~subdivision (1), options for implementing such recommendations and~~
20 ~~mechanisms which will encourage the appropriate integration of these services~~
21 ~~on a local or regional basis. To arrive at such recommendations, the Green~~

1 Mountain Care Board shall consider at least the following factors:

2 ~~(i) the values and goals reflected in the State Health Plan;~~

3 ~~(ii) the needs of the population on a statewide basis;~~

4 ~~(iii) the needs of particular geographic areas of the State, as~~
5 ~~identified in the State Health Plan;~~

6 ~~(iv) the needs of uninsured and underinsured populations;~~

7 ~~(v) the use of Vermont facilities by out-of-state residents;~~

8 ~~(vi) the use of out-of-state facilities by Vermont residents;~~

9 ~~(vii) the needs of populations with special health care needs;~~

10 ~~(viii) the desirability of providing high quality services in an~~
11 ~~economical and efficient manner, including the appropriate use of midlevel~~
12 ~~practitioners;~~

13 ~~(ix)(B) consider the cost impact of these resource requirements on~~
14 ~~health care expenditures;~~

15 ~~(x) the overall quality and use of health care services as reported~~
16 ~~by the Vermont Program for Quality in Health Care and the Vermont Ethics~~
17 ~~Network;~~

18 ~~(xi) the overall quality and cost of services as reported in the~~
19 ~~annual hospital community reports;~~

20 ~~(xii) individual hospital four-year capital budget projections; and~~

21 ~~(xiii) the four-year projection of health care expenditures prepared~~

1 by the Board

2 (C) identify priorities using information from:

3 (i) the State Health Improvement Plan;

4 (ii) the community health needs assessments required by section

5 9405a of this title;

6 (iii) available health care workforce information;

7 (iv) materials provided to the Board through its other regulatory
8 processes, including hospital budget review, oversight of accountable care
9 organizations, issuance and denial of certificates of need, and health insurance
10 rate review; and

11 (v) the public input process set forth in this section; and

12 (D) use existing data sources to identify and analyze the gaps
13 between the supply of health resources and the health needs of Vermont
14 residents and to identify utilization trends to determine areas of
15 underutilization and overutilization.

16 (2) ~~In the preparation of the Plan, the~~ The Green Mountain Care Board
17 shall convene the Green Mountain Care Board General Advisory Committee
18 established pursuant to subdivision 9374(e)(1) of this title. ~~The Green~~
19 ~~Mountain Care Board General Advisory Committee shall review drafts and to~~
20 provide recommendations to the Board during the Board's development of the
21 Plan.

1 (3) ~~The Board, with the Green Mountain Care Board General Advisory~~
2 ~~Committee, shall conduct at least five public hearings, in different regions of~~
3 ~~the State, on the Plan as proposed shall receive and consider public input on~~
4 ~~the Plan at a minimum of one Board meeting and one meeting of the Advisory~~
5 ~~Committee and shall give interested persons an opportunity to submit their~~
6 ~~views orally and in writing. To the extent possible, the Board shall arrange for~~
7 ~~hearings to be broadcast on interactive television. Not less than 30 days prior~~
8 ~~to any such hearing, the Board shall publish in the manner prescribed in~~
9 ~~1 V.S.A. § 174 the time and place of the hearing and the place and period~~
10 ~~during which to direct written comments to the Board. In addition, the Board~~
11 ~~may create and maintain a website to allow members of the public to submit~~
12 ~~comments electronically and review comments submitted by others.~~

13 (4) ~~The Board shall develop a mechanism for receiving ongoing public~~
14 ~~comment regarding the Plan and for revising it every four years or as needed~~

15 As used in this section:

16 (A) “Health resources” means investments into the State’s health care
17 system, including investments in personnel, equipment, and infrastructure
18 necessary to deliver:

19 (i) hospital, nursing home, and other inpatient services;

20 (ii) ambulatory care, including primary care services, mental
21 health services, health screening and early intervention services, and services

1 for the prevention and treatment of substance use disorders;

2 (iii) home health services; and

3 (iv) emergency care, including ambulance services.

4 (B) "Health resources" may also include investments in personnel,
5 equipment, and infrastructure necessary to address the social determinants of
6 health.

7 ~~(5) The Board in consultation with appropriate health care organizations~~
8 ~~and State entities shall inventory and assess existing State health care data and~~
9 ~~expertise, and shall seek grants to assist with the preparation of any revisions~~
10 ~~to the Health Resource Allocation Plan.~~

11 ~~(6) The Plan or any revised plan proposed by the Board shall be the~~
12 ~~Health Resource Allocation Plan for the State after it is approved by the~~
13 ~~Governor or upon passage of three months from the date the Governor~~
14 ~~receives the proposed Plan, whichever occurs first, unless the Governor~~
15 ~~disapproves the proposed Plan, in whole or in part. If the Governor~~
16 ~~disapproves, he or she shall specify the sections of the proposed Plan which~~
17 ~~are objectionable and the changes necessary to meet the objections. The~~
18 ~~sections of the proposed Plan not disapproved shall become part of the Health~~
19 ~~Resource Allocation Plan.~~

20 Sec. 5. 18 V.S.A. § 9456 is amended to read:

21 § 9456. BUDGET REVIEW

22 * * *

1 (b) In conjunction with budget reviews, the Board shall:

2 (1) review utilization information;

3 (2) consider ~~the goals and recommendations of the Health Resource~~
4 Allocation Plan identifying Vermont's critical health needs, goods, services,
5 and resources developed pursuant to section 9405 of this title;

6 * * *

7 * * * Certificate of Need * * *

8 Sec. 6. 18 V.S.A. chapter 221, subchapter 5 is amended to read:

9 Subchapter 5. Health Facility Planning

10 § 9431. POLICY AND PURPOSE

11 (a) It is declared to be the public policy of this State that the general
12 welfare and protection of the lives, health, and property of the people of this
13 State require that all new health care projects be offered or developed in a
14 manner that avoids unnecessary duplication and contains or reduces increases
15 in the cost of delivering services, while at the same time maintaining and
16 improving the quality of and access to health care services, and promoting
17 rational allocation of health care resources in the State; and that the need, cost,
18 type, level, quality, and feasibility of providing any new health care project be
19 subject to review and assessment prior to any offering or development.

20 (b) ~~In order to carry out the policy goals of this subchapter, the board shall~~
21 ~~adopt by rule by January 1, 2013, certificate of need procedural guidelines to~~

1 assist in its decision making. ~~The guidelines shall be consistent with the state~~
2 ~~health plan and the health resource allocation plan. [Repealed.]~~

3 * * *

4 § 9433. ADMINISTRATION

5 (a) The Green Mountain Care Board shall exercise such duties and powers
6 as ~~shall be~~ necessary for the implementation of the certificate of need program
7 as provided by and consistent with this subchapter. The Board shall issue or
8 deny certificates of need and administer the program.

9 (b) The Board ~~may~~ shall adopt rules governing the review of certificate of
10 need applications consistent with and necessary to the proper administration of
11 this subchapter. All rules shall be adopted pursuant to 3 V.S.A. chapter 25.

12 (c) The Board shall consult with hospitals, ~~nursing homes,~~ and other health
13 care facilities, professional associations and societies, the Secretary of Human
14 Services, the Office of the Health Care Advocate, and other interested parties
15 in matters of policy affecting the administration of this subchapter.

16 (d) ~~The board shall administer the certificate of need program. [Repealed.]~~

17 § 9434. CERTIFICATE OF NEED; GENERAL RULES

18 * * *

19 (b) A hospital shall not develop or have developed on its behalf a new
20 health care project without issuance of a certificate of need by the Board. For
21 purposes of this subsection, a “new health care project” includes the following:

1 (e) ~~Beginning January 1, 2013, and biannually thereafter, the~~ The Board
2 ~~may by rule periodically~~ adjust the monetary jurisdictional thresholds
3 contained in this section. In doing so, the Board shall reflect the same
4 categories of health care facilities, services, and programs recognized in this
5 section. Any adjustment by the Board shall not exceed an amount calculated
6 using the cumulative Consumer Price Index rate of inflation.

7 § 9435. EXCLUSIONS

8 * * *

9 (f) Excluded from this subchapter are routine replacements of nonmedical
10 equipment and fixtures, including furnaces, boilers, refrigeration units, kitchen
11 equipment, heating and cooling units, and similar items. These replacements
12 purchased by a hospital shall be included in the hospital's budget and may be
13 reviewed in the budget process set forth in subchapter 7 of this chapter.

14 § 9437. CRITERIA

15 A certificate of need shall be granted if the applicant demonstrates that the
16 project serves the public good and the Board finds ~~that~~:

17 (1) ~~the application is consistent with the Health Resource Allocation~~
18 ~~Plan~~ The proposed project aligns with statewide health care reform goals and
19 principles because the project:

20 (A) takes into consideration health care payment and delivery system
21 reform initiatives;

1 (B) addresses current and future community needs in a manner that
2 balances statewide needs, if applicable; and

3 (C) is consistent with appropriate allocation of health care resources,
4 including appropriate utilization of services, as identified in the Health
5 Resource Allocation Plan developed pursuant to section 9405 of this title.

6 (2) ~~the~~ The cost of the project is reasonable, because each of the
7 following conditions is met:

8 (A) ~~the~~ The applicant's financial condition will sustain any financial
9 burden likely to result from completion of the project;

10 (B) ~~the~~ The project will not result in an undue increase in the costs of
11 medical care or an undue impact on the affordability of medical care for
12 consumers. In making a finding under this subdivision, the Board shall
13 consider and weigh relevant factors, including:

14 (i) the financial implications of the project on hospitals and other
15 clinical settings, including the impact on their services, expenditures, and
16 charges; and

17 (ii) whether the impact on services, expenditures, and charges is
18 outweighed by the benefit of the project to the public; and

19 (C) ~~less~~ Less expensive alternatives do not exist, would be
20 unsatisfactory, or are not feasible or appropriate;

21 (D) If applicable, the applicant has incorporated appropriate energy

1 efficiency measures.

2 (3) ~~there~~ There is an identifiable, existing, or reasonably anticipated
3 need for the proposed project ~~which~~ that is appropriate for the applicant to
4 provide;

5 (4) ~~the~~ The project will improve the quality of health care in the State or
6 provide greater access to health care for Vermont's residents, or both;

7 (5) ~~the~~ The project will not have an undue adverse impact on any other
8 existing services provided by the applicant;

9 (6) ~~the project will serve the public good;~~ [Repealed.]

10 (7) ~~the~~ The applicant has adequately considered the availability of
11 affordable, accessible ~~patient~~ transportation services to the facility; ~~and, if~~
12 applicable.

13 (8) ~~if~~ If the application is for the purchase or lease of new Health Care
14 Information Technology, it conforms with the ~~health information technology~~
15 ~~plan~~ Health Information Technology Plan established under section 9351 of
16 this title.

17 § 9439. COMPETING APPLICATIONS

18 * * *

19 (b) When a letter of intent to compete has been filed, the review process is
20 suspended and the time within which a decision must be made as provided in
21 subdivision 9440(d)(4) of this title is stayed until the competing application

1 has been ruled complete or for a period of 55 days from the date of notification
2 under subdivision 9440(c)(8) as to the original application, whichever is
3 shorter.

4 * * *

5 ~~(d) The Board may, by rule, establish regular review cycles for the addition~~
6 ~~of beds for skilled nursing or intermediate care. [Repealed.]~~

7 ~~(e) In the case of proposals for the addition of beds for skilled nursing or~~
8 ~~intermediate care, the Board shall identify in advance of the review the number~~
9 ~~of additional beds to be considered in that cycle or the maximum additional~~
10 ~~financial obligation to be incurred by the agencies of the State responsible for~~
11 ~~financing long-term care. The number of beds shall be consistent with the~~
12 ~~number of beds determined to be necessary by the Health Resource~~
13 ~~Management Plan or State Health Plan, whichever applies, and shall take into~~
14 ~~account the number of beds needed to develop a new, efficient facility.~~

15 ~~[Repealed.]~~

16 (f) Unless an application meets the requirements of subsection 9440(e) of
17 this title, the Board shall consider disapproving a certificate of need
18 application for a hospital if a project was not identified prospectively as
19 needed at least two years prior to the time of filing in the hospital's four-year
20 capital plan required under subdivision 9454(a)(6) of this title. The Board
21 shall review all hospital four-year capital plans as part of the review under

1 subdivision 9437(2)(B) of this title.

2 § 9440. PROCEDURES

3 * * *

4 (c) The application process shall be as follows:

5 (1) ~~Applications shall be accepted only at such times as the Board shall~~
6 ~~establish by rule. [Repealed.]~~

7 (2)(A) Prior to filing an application for a certificate of need, an
8 applicant shall file an adequate letter of intent with the Board ~~no~~ not less than
9 30 days ~~or, in the case of review cycle applications under section 9439 of this~~
10 ~~title, no less than 45 days~~ prior to the date on which the application is to be
11 filed. The letter of intent shall form the basis for determining the applicability
12 of this subchapter to the proposed expenditure or action. A letter of intent
13 shall become invalid if an application is not filed within six months ~~of~~ after the
14 date that the letter of intent is received ~~or, in the case of review cycle~~
15 ~~applications under section 9439 of this title, within such time limits as the~~
16 ~~Board shall establish by rule.~~ The Board shall post public notice of such
17 letters of intent on its website electronically within five business days ~~of~~ after
18 receipt. The public notice shall identify the applicant, the proposed new health
19 care project, and the date by which a competing application or petition to
20 intervene must be filed.

21 * * *

1 (5)(A) An applicant seeking expedited review of a certificate of need
2 application may simultaneously file with the Board a request for expedited
3 review and an application. After receiving the request and an application, the
4 Board shall issue public notice of the request and application in the manner set
5 forth in subdivision (2) of this subsection.

6 (B)(i) At least 20 days after the public notice was issued, if no
7 competing application has been filed and no party has sought and been
8 granted, nor is likely to be granted, interested party status, the Board, ~~upon~~
9 ~~making a determination that~~ may issue a certificate of need in accordance with
10 such expedited process as the Board deems appropriate, if the Board
11 determines that:

12 (I) the proposed project ~~may be uncontested~~ appears likely not
13 to be contested and does not substantially alter services, ~~as defined by rule, or~~
14 ~~upon making a determination that;~~ or

15 (II) the application relates to a health care facility affected by
16 bankruptcy proceedings, ~~may formally declare the application uncontested and~~
17 ~~may issue a certificate of need without further process, or with such~~
18 ~~abbreviated process as the Board deems appropriate.~~

19 (ii) Any order granting expedited review shall include the
20 procedures and timelines that the Board shall follow for the expedited review
21 process. If practicable, the expedited review process shall include acceptance

1 of public comment until at least 10 days after the expedited application is
2 complete.

3 (C) If a competing application is filed or a person ~~opposing the~~
4 ~~application~~ is granted interested party status, the applicant shall follow the
5 certificate of need standards and procedures in this section, except that:

6 (i) a competing applicant or interested party may waive, in
7 writing, the requirement for a public hearing; and

8 (ii) in the case of a health care facility affected by bankruptcy
9 proceedings, the Board may, after notice and an opportunity to be heard ~~may~~,
10 issue a certificate of need with such abbreviated process as the Board deems
11 appropriate, notwithstanding the contested nature of the application.

12 (D) The Board shall review applications for the following projects on
13 an expedited basis, unless a request for intervention as a competing applicant
14 or interested party is granted:

15 (i) the repair, renovation, or replacement of facility infrastructure,
16 or a combination thereof that does not involve new construction; and

17 (ii) the routine replacement of medical equipment if the
18 technology and capability of the new equipment is comparable to that of the
19 replaced equipment.

20 (6) If an applicant fails to respond to an information request under
21 subdivision (4) of this subsection within ~~six months or, in the case of review~~

1 ~~cycle applications under section 9439 of this title, within such time limits as~~
2 ~~the Board shall establish by rule 90 days, the application will~~ shall be deemed
3 inactive unless the applicant, within six months after the expiration of
4 the 90-day period, requests in writing and shows good cause that the
5 application should be reactivated, and the Board grants the request. If an
6 applicant fails to respond to an information request within ~~12 months or, in the~~
7 ~~case of review cycle applications under section 9439 of this title, within such~~
8 ~~time limits as the Board shall establish by rule six months~~, the application will
9 shall become invalid unless the applicant requests, and the Board grants, an
10 extension.

11 (7) For purposes of this section, “interested party” status shall be
12 granted to persons or organizations representing the interests of persons who
13 demonstrate that they will be substantially and directly affected by the new
14 health care project under review. Persons able to render material assistance to
15 the Board by providing nonduplicative evidence relevant to the determination
16 may be admitted in an amicus curiae capacity but shall not be considered
17 parties. A petition seeking party or amicus curiae status ~~must~~ shall be filed
18 ~~within 20 days following public notice of the letter of intent, or within 20 days~~
19 ~~following public notice that the petition is complete~~ not later than five business
20 days after the application is complete. The Board shall grant or deny a petition
21 to intervene under this subdivision within 15 days after the petition is filed.

1 The Board shall grant or deny the petition within an additional 30 days upon
2 finding that good cause exists for the extension. Once interested party status is
3 granted, the Board shall provide the information necessary to enable the party
4 to participate in the review process, including information about procedures,
5 copies of all written correspondence, and copies of all entries in the application
6 record.

7 (8) Once an application has been deemed to be complete, public notice
8 of the application shall be provided ~~in newspapers having general circulation~~
9 ~~in the region of the State affected by the application~~ electronically on the
10 Board's website. The notice shall identify the applicant, the proposed new
11 health care project, and the date ~~by which a competing application under~~
12 ~~section 9439 of this title or a petition to intervene must be filed,~~ time, and
13 location of any public hearing.

14 (9) The Office of the Health Care Advocate established under chapter
15 229 of this title or, in the case of nursing homes, the Long-Term Care
16 Ombudsman's Office established under 33 V.S.A. § 7502, is authorized but not
17 required to participate in any administrative or judicial review of an
18 application under this subchapter and shall be considered an interested party in
19 such proceedings upon filing a notice of intervention with the Board. Once
20 either office files a notice of intervention pursuant to this subchapter, the
21 Board shall provide that office with the information necessary to participate in

1 the review process, including information about procedures, copies of all
2 written correspondence, and copies of all entries in the application record for
3 all certificate of need proceedings, regardless of whether expedited status has
4 been granted.

5 (d) The review process shall be as follows:

6 (1) The Board shall review:

7 (A) the application materials provided by the applicant; and

8 (B) any information, evidence, or arguments raised by interested
9 parties or amicus curiae, and any other public input.

10 (2) Except as otherwise provided in subdivision (c)(5) and subsection
11 (e) of this section, the Board shall hold a public hearing during the course of a
12 review.

13 (3) The Board shall make a final decision within 120 days after the date
14 of notification under subdivision (c)(4) of this section. Whenever it is not
15 practicable to complete a review within 120 days, the Board may extend the
16 review period up to an additional 30 days. ~~Any review period may be~~
17 ~~extended with the written consent of the applicant and all other applicants in~~
18 ~~the case of a review cycle process.~~

19 * * *

20 (h) As used in this section, an application or proposed project is
21 “contested” if one or more interested parties have intervened in the proceeding.

1 If an interested party withdraws from the application or signifies its support of
2 the application in writing before the Board renders a final decision, the
3 application shall not be considered contested and the Board shall not be
4 required to hold a public hearing on the application pursuant to subdivision
5 (d)(2) of this section or issue a proposed decision pursuant to subdivision
6 (d)(5) of this section.

7 * * *

8 § 9440b. INFORMATION TECHNOLOGY; REVIEW PROCEDURES

9 Notwithstanding the procedures in section 9440 of this title, ~~upon approval~~
10 ~~by the General Assembly of the Health Information Technology Plan~~
11 ~~developed under section 9351 of this title~~, the Board shall establish by rule
12 standards and expedited procedures for reviewing applications for the purchase
13 or lease of health care information technology that otherwise would be subject
14 to review under this subchapter. Such applications ~~may~~ shall not be granted or
15 approved unless they are consistent with the Health Information Technology
16 Plan developed under section 9351 of this title and the Health Resource
17 Allocation Plan. ~~The Board's rules may include a provision requiring that~~
18 ~~applications be reviewed by the health information advisory group authorized~~
19 ~~under section 9352 of this title. The advisory group shall make written~~
20 ~~findings and a recommendation to the board in favor of or against each~~
21 ~~application.~~

1 § 9441. FEES

2 * * *

3 (d) All fees collected pursuant to this section shall be deposited into the
4 Green Mountain Care Board Regulatory and Administrative Fund established
5 by subsection 9404(d) of this title and may be used by the Board to administer
6 its obligations, responsibilities, and duties as required by law.

7 * * *

8 § 9445. ENFORCEMENT

9 (a) Any person who offers or develops any new health care project within
10 the meaning of this subchapter without first obtaining a certificate of need as
11 required ~~herein~~ by this subchapter, or who otherwise violates any of the
12 provisions of this subchapter or any rule adopted or order issued pursuant to
13 this subchapter, may be subject to one or both of the following administrative
14 sanctions by the Board, after notice and an opportunity to be heard:

15 * * *

16 (b) In addition to all other sanctions, if any person offers or develops any
17 new health care project without first having been issued a certificate of need or
18 certificate of exemption for the project, or violates any other provision of this
19 subchapter or any ~~lawful~~ rule adopted or order issued pursuant to this
20 subchapter, the Board, the Office of the Health Care Advocate, the State Long-
21 Term Care Ombudsman, and health care providers and consumers located in

1 the State shall have standing to maintain a civil action in the Superior Court of
2 the county in which such alleged violation has occurred, or in which such
3 person may be found, to enjoin, restrain, or prevent such violation. Upon
4 written request by the Board, it shall be the duty of the Vermont Attorney
5 General to furnish appropriate legal services and to prosecute an action for
6 injunctive relief to an appropriate conclusion, which shall not be reimbursed
7 under subdivision (a)(2) of this section.

8 (c)(1) After notice and an opportunity for hearing, the Board may impose
9 on a person who ~~knowingly~~ violates a provision of this subchapter, or a rule
10 adopted or order ~~adopted~~ issued pursuant to this subchapter or 8 V.S.A. § 15,
11 one or more of the following:

12 (A) a civil administrative penalty of ~~no not more than \$40,000.00~~
13 \$75,000.00, or in the case of a continuing violation, a civil administrative
14 penalty of ~~no not more than \$100,000.00~~ \$200,000.00 or one-tenth of one
15 percent of the gross annual revenues of the health care facility, whichever is
16 greater, which shall not be reimbursed under subdivision (a)(2) of this section,
17 ~~and the Board may;~~

18 (B) an order that the entity to person cease and desist from further
19 violations;₂ ~~and to take~~

20 (C) any such other actions necessary to remediate a violation.

21 (2) A person aggrieved by a decision of the Board under this ~~subsection~~

1 subchapter may appeal under section 9381 of this title.

2 (d) The Board shall adopt by rule criteria for assessing the circumstances in
3 which a violation of a provision of this subchapter, a rule adopted pursuant to
4 this subchapter, or the terms or conditions of a certificate of need require that a
5 penalty under this section shall be imposed, and criteria for assessing the
6 circumstances in which a penalty under this section may be imposed.

7 § 9446. HOME HEALTH AGENCIES; GEOGRAPHIC SERVICE AREAS

8 The terms of a certificate of need relating to the boundaries of the
9 geographic service area of a home health agency may be modified by the
10 Board, in consultation with the Commissioner of Disabilities, Aging, and
11 Independent Living, after notice and opportunity for hearing, or upon written
12 application to the Board by the affected home health agencies or consumers,
13 demonstrating a substantial need ~~therefor~~ for the modification. Service area
14 boundaries may be modified by the Board to take account of natural or
15 physical barriers that may make the provision of existing services
16 uneconomical or impractical, to prevent or minimize unnecessary duplication
17 of services or facilities, or otherwise to promote the public interest. The Board
18 shall issue an order granting such application only upon a finding that the
19 granting of such application is consistent with the purposes of 33 V.S.A.
20 chapter 63, subchapter 1A and the Health Resource Allocation Plan established
21 under section 9405 of this title and after notice and an opportunity to

1 participate on the record by all interested persons, including affected local
2 governments, ~~pursuant to rules adopted by the Board.~~

3 * * * Expenditure Analysis; Health Care Spending Estimate * * *

4 Sec. 7. 18 V.S.A. § 9373 is amended to read:

5 § 9373. DEFINITIONS

6 As used in this chapter:

7 * * *

8 (14) ~~“Unified health care budget” means the budget established in~~
9 ~~accordance with section 9375a of this title. [Repealed.]~~

10 * * *

11 (17) “Health care spending estimate” means the estimate established in
12 accordance with section 9383 of this title.

13 Sec. 8. 18 V.S.A. § 9375(b) is amended to read:

14 (b) The Board shall have the following duties:

15 * * *

16 (11) Develop the ~~unified health care budget~~ spending estimate pursuant
17 to section ~~9375a~~ 9383 of this title.

18 * * *

19 Sec. 9. 18 V.S.A. § 9383 is added to read:

20 § 9383. EXPENDITURE ANALYSIS; HEALTH CARE SPENDING

21 ESTIMATE

1 (a) The Board shall develop annually an expenditure analysis and an
2 estimate of future health care spending covering a period of at least two years.
3 These analyses shall contain data and information as set forth in this section
4 that the Board shall consider and incorporate into its work in furtherance of its
5 statutory duties, including using them as tools in the Board's review of health
6 insurance rates and the budgets of hospitals and accountable care
7 organizations. The analyses shall:

8 (1) inform the Board's regulatory processes in order to promote
9 improved health outcomes, health care cost containment, quality of care,
10 access to care, and appropriate resource allocation; and

11 (2) quantify the total amount of money that has been and is estimated to
12 be expended for all health care services provided by health care facilities and
13 providers in Vermont and for health care services provided to residents of this
14 State regardless of the site of service, to the extent data are available.

 (b) The expenditure analysis and the estimate of future health care
spending shall include breakdowns for broad sectors such as hospital,
physician, *mental health*, home health, and pharmacy and may include
estimates for disease prevention and health promotion activities and other
social determinants of health. The analyses shall include:

15 (1) expenditures by commercial health plans, hospital and medical
16 service corporations, and health maintenance organizations regulated by this

1 State; and

2 (2) expenditures for Medicare, Medicaid, self-insured employers, and
3 other forms of health coverage, to the extent data are available.

(c) Annually on or before January 15, the Board shall submit the
expenditure analysis and the estimate of future health care spending to the
~~House Committees on Appropriations and on Health Care~~ *House Committees*
on Appropriations, on Health Care, and on Human Services and the Senate
Committees on Appropriations, on Health and Welfare, and on Finance.

4 Sec. 10. 18 V.S.A. § 9402 is amended to read:

5 § 9402. DEFINITIONS

6 As used in this chapter, unless otherwise indicated:

7 * * *

8 (5) “Expenditure analysis” means the expenditure analysis developed
9 pursuant to section ~~9375a~~ 9383 of this title.

10 * * *

11 (15) “~~Unified health care budget~~ Health care spending estimate” means
12 the ~~budget~~ spending estimate established in accordance with section ~~9375a~~
13 9383 of this title.

14 * * *

15 Sec. 11. 32 V.S.A. § 307(d) is amended to read:

16 (d) The Governor’s budget shall include his or her recommendations for an

1 annual budget for Medicaid and all other health care assistance programs
2 administered by the Agency of Human Services. The Governor's proposed
3 Medicaid budget shall include a proposed annual financial plan, and a
4 proposed five-year financial plan, with the following information and analysis:

5 * * *

6 (5) health care inflation trends consistent with provider reimbursements
7 approved under 18 V.S.A. § 9376 and expenditure trends reported under
8 18 V.S.A. § ~~9375a~~ 9383;

9 * * *

10 Sec. 12. REPEAL

11 18 V.S.A. § 9375a (expenditure analysis; unified health care budget) is
12 repealed.

13 * * * Delegation of Services by the Green Mountain Care Board * * *

14 Sec. 13. 18 V.S.A. § 9374(d) is amended to read:

15 (d)(1) The Chair shall have general charge of the offices and employees of
16 the Board but may hire a director to oversee the administration and operation.

17 (2)(A) Except for final decisions in regulatory matters over which the
18 Board has jurisdiction, a member of the Board, Board officer, or Board
19 employee may perform any service that is within the Board's jurisdiction and
20 that the Board delegates to the member, officer, or employee.

21 (B) The Board shall establish procedures to ensure that Board

1 employees have appropriate supervision in their performance of delegated
2 activities and that the Board remains informed regarding these activities.

3 * * * Medicaid Advisory Rate Case * * *

4 Sec. 14. 18 V.S.A. § 9573 is added to read:

5 § 9573. MEDICAID ADVISORY RATE CASE

6 (a) On or before December 31 of each year, the Green Mountain Care
7 Board shall review any all-inclusive population-based payment arrangement
8 between the Department of Vermont Health Access and an accountable care
9 organization for the following calendar year. The Board's review shall include
10 the number of attributed lives, eligibility groups, covered services, elements of
11 the per member, per month payment, and any other nonclaims payments. The
12 Board's review may include deliberative sessions to the same extent permitted
13 for insurance rate review under 8 V.S.A. § 4062.

14 (b) The review shall be nonbinding on the Agency of Human Services, and
15 nothing in this section shall be construed to abrogate the designation of the
16 Agency of Human Services as the single State agency as required by 42 C.F.R.
17 § 431.10.

18 (c) The Board shall review the payment arrangement prior to the
19 finalization of a contract between the Department and the accountable care
20 organization and shall maintain the confidentiality of information as needed to
21 preserve the parties' contract negotiations. The Board shall release its

1 advisory opinion within 30 days following the finalization of the contract
2 between the parties.

3 (d) The Department of Vermont Health Access shall provide the Board and
4 its contractors with all data and information that the Board requests for its
5 review within the time frame set forth by the Board.

6 * * * Effective Dates * * *

7 Sec. 15. EFFECTIVE DATES

8 (a) Sec. 6 (certificate of need) shall take effect on July 1, 2018, provided
9 that for applications for a certificate of need that are already in process on that
10 date, the rules and procedures in place at the time the application was filed
11 shall continue to apply until a final decision is made on the application.

12 (b) The remaining sections of this act shall take effect on passage.